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OCT 21 2004

OFFICE OF PETITIONS

In re Application of	:
Edmund Y.M. Chen	:
Application No. 09/782,015	: DECISION ON PETITION
Filed: 12 February, 2001	: UNDER 37 CFR 1.78(a)(3)
Atty Docket No. 000115P002D	:
	:

This is a decision on the petition filed on 1 September, 2004, which is treated as a petition filed under 37 CFR § 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed nonprovisional application set forth in the amendment embodied in the petition filed on 1 September, 2004.

The petition is **DISMISSED AS MOOT**.

The current procedure where a claim for priority under 37 CFR 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to

accept a late claim for priority under 37 CFR 1.78(a)(3).¹ In the instant case, the Office noted the claim for priority of the prior-filed application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the \$1,330.00 petition fee submitted is unnecessary. The petition fee will be refunded to counsel's deposit account, No. 02-2666, as authorized in the present petition.

Any questions concerning this decision on petition may be directed to Senior Petitions Attorney Douglas I. Wood at 571.272.3231. All other inquiries concerning either the examination process or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1654 for further processing.



Frances M. Hicks
Lead Paralegal
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.